

### **REMARKS**

Claims 19-33 were previously cancelled. Accordingly, Claims 1-18 are pending.

#### **First Rejection under 35 U.S.C. §112 (second paragraph)**

Claims 1-17 have been rejected under 35 U.S.C. § 112 (second paragraph) as being indefinite. In particular, the Examiner objects to the phrase “high amylopectin potato,” stating that “[i]t is not clear what type of potato would meet this designation.” (Office Action page 2, paragraph 3.)

The phrases “high amylopectin” and “normal amylopectin” are clearly defined in the specification. On page 3, lines 12-14, a normal amylopectin content is stated as containing about  $80\% \pm 3\%$  of amylopectin on a dry weight basis. On page 4, lines 12-17, and on page 10, lines 9-14, a high amylopectin content is stated as containing 85% or more amylopectin on a dry weight basis.

In order to expedite prosecution, Claim 1 has been amended to more clearly define that the flakes and/or granules “comprise starch that has a high amylopectin content of at least 85 wt.%. ” Support for this amendment can be found throughout the specification, including page 11, line 23, to page 12, line 8. Accordingly, Applicants request that this indefiniteness rejection be withdrawn.

#### **First Rejection under 35 U.S.C. §103(a)**

Claims 1-9 and 15-18 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Martines-Serna Villagran et al. (U.S. Patent No. 6,544,580, hereinafter “the ‘580 patent”) in view of the de Vries article (“New Possibilities with Amylopectin Potato Starch,” hereinafter “de Vries”). (Office Action pages 2-4, paragraphs 4, 5 and 7.)

The snack products of the present invention comprise potato flakes and/or granules. Flakes and/or granules are pieces of whole potatoes. The starch of these flakes and/or granules have a high amylopectin content, *i.e.*, an amylopectin content of at least 85% on a dry weight basis. (See page 4, lines 9-19, of the specification.)

In contrast, as conceded by the Examiner, the '580 patent teaches a snack product comprising potato flakes which do not have high amylopectin starch. (See May 18, 2004 Office Action, paragraph bridging pages 3 and 4.) In order to remedy this deficiency, the Examiner cites De Vries.

However, unlike the present invention, de Vries does not disclose the use of flakes and/or granules of high amylopectin potatoes in the food industry. Instead, De Vries is a general overview of potential applications of starch isolated from high amylopectin potatoes. In addition to starch, potato flakes and/or granules comprise proteins, lipids, sugars and fibers.

Thus, the combination of the '580 patent and de Vries does not teach the invention. At most, de Vries would have taught a skilled artisan to add isolated amylopectin potato starch to normal potato mash or potato snacks. (See first full paragraph on page 9 of de Vries.)

The Examiner states that "claim 1 recites 'wherein the flakes and/or granules *are derived from* a high amylopectin content potato' ...[P]hrases such as 'derived from a high amylopectin potato' are merely preferred methods of making the claimed product. Furthermore, claim 1 requires only that 'the potato comprises *starch that has an amylopectin content* of at least 85%.'" (Office Action page 5, 1<sup>st</sup> full paragraph.)

Claims 1, 3, 15 and 17 have been amended to more clearly define that the flakes and/or granules *themselves* comprise starch that has an amylopectin content of at least 85

wt.%. Support for this amendment can be found throughout the specification, including page 11, line 23, to page 12, line 8.

Even if a *prima facie* case of obviousness would have been presented (and the Applicants in no way believe that such a case has been presented), it would be overcome by the fact that de Vries **teaches away from the present invention**, as explained below.

One of the features of the present invention is that the use of potato flakes and/or granules with high amylopectin starch content provides an unexpectedly **increased expansion** in snack foods. The examples of the present application clearly demonstrate such increased expansion. In particular, see the tables on pages 16 and 19. These tables show that replacing potato flakes/granules of normal amylopectin content with potato flakes/granules of high amylopectin content provides an increase in expansion. See page 5, lines 4-9, of the specification.

On the other hand, de Vries states “the use of amylopectine potato starch leads to **less expansion** after frying.” (See first full paragraph on page 9 of de Vries. Emphasis added.) Thus, if a skilled artisan would have wanted to produce a potato snack with greater expansion, **de Vries would have led him away from using high amylopectin potato starch.**

The Examiner states that “the features upon which applicant relies (*i.e.*, expansion increases) are not recited in the rejected claim(s).” (See Office Action, page 4, 3<sup>rd</sup> full paragraph.) Claim 1 has been amended to recite the increased expansion.

Accordingly, Applicants request withdrawal of this obviousness rejection.

**Second Rejection under 35 U.S.C. §103(a)**

Claims 10-14 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over the '580 patent in view of de Vries and further in view of Jeffcoat et al. (U.S. Patent No. 6,541,060, hereinafter "the '060 patent"). The Examiner cites the '060 patent as teaching "a food product comprising less than 10% pregelatinized waxy potato starch." (Office Action page 3, paragraph 6.)

Since the claims upon which Claims 10-14 depend are not obvious over the '580 patent in view of de Vries, as discussed above, the further disclosure by the '060 patent does not render Claims 10-14 obvious. Accordingly, Applicants request withdrawal of this obviousness rejection.

Applicants respectfully submit that the application is now in condition for allowance, which action is earnestly solicited. If resolution of any remaining issue is required prior to allowance of this application, it is respectfully requested that the Examiner contact Applicants' undersigned attorney at the telephone number provided below.

Respectively submitted,



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